IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-27-01-2006

Coram:-
The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos. 4384 of 2003 and 29076 of 2004

W.P.No. 4384 of 2003

Tamil Nadu Veterinary
Assistant Surgeons Association,
Chennai, represented by its
General Secretary Dr.M. Om Murugan. .. Petitioner.

Vs.

1. The State of Tamil Nadu,
   represented by its Secretary to
   Government, Finance (C.M.P.C.)
   Department, Fort St. George, Chennai-9.

2. The State of Tamil Nadu,
   represented by its Secretary to
   Government, Animal Husbandry
   Department, Fort St. George, Chennai-9.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   High Court Complex, Chennai-104. .. Respondents.

W.P.No. 29076 of 2004

P. Ravichandran. .. Petitioner.

Vs.

1. The Director of Veterinary Services,
   Central Office Buildings, Block II,
   Teynampet, Chennai-2.

2. The Secretary to Government,
   Animal Husbandry and Fisheries
   Department, Secretariat,
   Fort St. George, Chennai-9.

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3. The Secretary to Government,
   Finance Department, Secretariat,
   Fort St. George, Chennai-9.

4. The Registrar,
   Tamil Nadu Administrative Tribunal,
   High Court Complex, Chennai-104. .. Respondents.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, (i) to call for records of 3rd respondent/Tamil Nadu Administrative Tribunal in O.A.No. 3940 of 2001 dated 29-10-2002 and quash the same and to direct the first respondent herein to grant the pay and allowances to the members of petitioner Association-Veterinary Assistant Surgeons in the scale of pay of Rs.8000-275-13500 with 25 per cent of non practising allowance on the basic pay with effect from 1-1-1996 and the consequential arrears thereof; and

(ii) to call for records of 3rd respondent/Government in Order No. G.O.Ms.No. 162 Finance (Pay Cell) Department, dated 13-4-98 in so far as fixing the scale of pay for veterinary Assistant Surgeons at Rs.6500-11,100/- scale instead of Rs.8000-275-13500 scale and the consequential order passed by Tamil Nadu Administrative Tribunal in O.A.No. 3594 of 1999 along with other batch cases dated 29-10-2002, quash the same and to direct the 1st, 2nd and 3rd respondents herein to grant the pay and allowances of the Veterinary Assistant Surgeons on par with that of their counter-part in Central Government (i.e) pay of Rs.8000-275-13,500 with effect from 1-1-96 with all consequential benefits thereon.

Mr. N.G.R. Prasad for Mr.G. Purushothaman:-
For petitioner in both W.Ps.

Mr.R. Muthukumarasamy, Addl. Advocate General
assisted by Mr. E. Sampathkumar, Govt., Advocate:-
For Respondents 1 and 2 and Respondents 1 to 3
respectively.

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COMMON ORDER
(Order of Court was made by P. Sathasivam, J.,)

Tamil Nadu Veterinary Assistant Surgeons Association, Chennai through its General Secretary Dr. M. Om Murugan has filed

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W.P.No. 4384/2003 for quashing of the order of Tamil Nadu Administrative Tribunal, Chennai dated 29-10-2002, made in Original Application No. 3940 of 2001 and for consequential direction to the first respondent/Secretary to the Government, Finance (CMPC) Department, Chennai-9 to grant pay and allowances to the members of the petitioner Association-Veterinary Assistant Surgeons in the scale of pay of Rs.8000-275-13500 with 25 per cent of non-practising allowance on the basic pay with effect from 1-1-1996 and consequential arrears thereof.

2. One P. Ravichandran of Dindigul-1 has filed W.P.No. 29076 of 2004 for issuance of a Writ of Certiorarified Mandamus to call for records of the Secretary to the Government, Finance Department, Chennai-9 in G.O.Ms.No. 162 Finance (PC) Department dated 13-4-98 in so far as fixing the scale of pay for Veterinary Assistant Surgeons at Rs.6500-11100/- scale instead of Rs.8000-275-13500 scale and the consequential order passed by the Tamil Nadu Administrative Tribunal in O.A.No. 3594 of 1999 along with other batch cases dated 29-10-2002 and quash the same and direct the respondents 1 to 3 herein to grant the pay and allowances of the Veterinary Assistant Surgeons on par with that of their counter part in Central Government i.e., pay of Rs.8,000-275-13,500 with effect from 1-1-96 with all consequential benefits thereon.

3. Since the first writ petition is by the Association, the second one by individual and the claim made in both the writ petitions is one and the same, they are being disposed of by the following common order. For convenience we shall refer the details as stated in the writ petition filed by the Tamil Nadu Veterinary Assistant Surgeons Association. According to them, it is a recognised Association by the Government of Tamil Nadu in G.O.Ms.No. 968, Development Department dated 21-5-1924. The petitioner Association is espousing the common cause of Veterinary Assistant Surgeons working in Tamil Nadu. The prescribed qualification for the post of Veterinary Assistant Surgeon is B.V.Sc., or B.V.Sc., and Animal Husbandry. The duration of the course if 4 ½ years study plus 6 months Internship. Selection process is through Tamil Nadu Public Service Commission. Registration of the Degree is compulsory with the Tamil Nadu Veterinary Council. Authorised to attend in-patients and out-patients and to attend out break of diseases of animals. Authorised to issue health certificates and postmortem certificates. Authorised to give evidence as experts under Indian Evidence Act before the Court of law. Their services are categorised as essential service, hence they work throughout the year including Sundays and Government holidays.

4. In the First Pay Commission in Tamil Nadu, the basic pay fixed for Civil Assistant Surgeons and Dental Surgeons was Rs.300-575 whereas for Sidha Doctors and Veterinary Assistant

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Surgeons was Rs.225-425. In the second pay commission in the year 1969, basic pay fixed for Civil Assistant Surgeons and Dental Surgeons was Rs.525-25-600-30-690-35-900, for Sidha Doctors was Rs.400-650 and after agitation it was revised to Rs.425-20-525-25-700 at par with Veterinary Assistant Surgeons. In the third pay commission in the year 1974, basic pay fixed for Civil Assistant Surgeons and Dental Surgeons was Rs.750-50-1350, for Sidha Doctors and Veterinary Assistant Surgeons was Rs.600-30-750-35-890-40-1050. In the fourth pay commission in the year 1979, basic pay fixed for Civil Assistant Surgeons, Dental Surgeons, Sidha Doctors and Homeopathy Doctors was Rs.1340-2435 whereas Veterinary Assistant Surgeons were alone signed out with a lesser basic of Rs.1160-1950. During the fifth pay commission it was accepted and placed by the State Government that Veterinary Assistant Surgeons of State Government are kept at par in scale of pay with Veterinary Assistant Surgeons of Central Government and accepted to keep the same in a scale of Rs.2000-60-2300-75-3200-100-3500.

5. There is a pay disparity with that of their counterpart in the Central Government due to scale to scale fixation by the State Government instead of cadre to cadre in G.O.Ms.No. 162 Finance (P.C) Department dated 13-4-1998. The petitioner Association made representations to the Government to redress their grievances. The qualifications prescribed for appointment to the post of Veterinary Assistant Surgeon is B.V.Sc., and recognised by the Government of India. The qualification prescribed for appointment to the post of Veterinary Assistant Surgeon in Government of India is equal and the same as prescribed in Government of Tamil Nadu i.e., B.V.Sc.

6. The Government of Tamil Nadu in G.O.Ms.No. 666, Finance (P.C) Department dated 27-6-89, accepted the recommendations of the Commission constituted for that purpose which has recommended Central Government scale of pay. The Government in G.O.Ms.No. 414, Finance (P.C) Department dated 31-7-97, constituted an official committee to examine the question of revision of scale of pay and allowances of State Government employees and teachers based on the decision of the Central Government on the recommendation of the V Central Pay Commission and make necessary recommendations regarding the extension of the pay scale to State Government Employees and Teachers as has been given by the Central Government Employees in pursuant to V Central Pay Commission. The Official Committee has recommended the same scale of pay of Central Government of Employees to the State Government Employees in respect of many categories and the same was accepted by the State Government vide G.O.Ms.No. 162, Finance (P.C) Department dated 13-4-98. But unfortunately, Veterinary Assistant Surgeons were not granted pay parity with that of their counterpart working in other departments in the State Government and the Central Government.

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7. The Veterinary Assistant Surgeons are to be promoted to Selection Grade post equivalent to Assistant Director post after 10 years of service and promoted to Special Grade posts equivalent to Deputy Director post after 20 years of service. Both the posts are not by direct recruitment but only through promotions. Therefore, Veterinary Assistant Surgeons at a basic of Rs.6,500-250-11,100 at entry level, on attaining selection grade equivalent to Assistant Director after 10 years of service, basic pay will cross the scale of Rs.9,100-15,500 instead of Rs.8000-275-13,500. But an anomaly is artificially created by putting a rider whichever is lesser. If the pay scale is upgraded to Rs.8000-275-13,500 for Veterinary Assistant Surgeons, there will not be any anomaly at all.

8. Since the Government did not take any steps to fix the scale of pay at par with that of their counterpart in Central Government, they have preferred Original Application No. 3940/2001 before the Administrative Tribunal. Unfortunately, the Tribunal by the impugned order and on an erroneous view, dismissed their application. In the same order, the Tribunal has also dismissed other applications filed by individual Veterinary Assistant Surgeons. Hence the present writ petitions.

9. Heard Mr. N.G.R. Prasad, learned counsel for the petitioners and Mr. R. Muthukumarasamy, learned Additional Advocate General for official respondents.

10. The only point for consideration in these writ petitions is, whether the Veterinary Assistant Surgeons working in Animal Husbandry Department are entitled to pay and allowances in the scale of pay of Rs.8000-275-13,500 as claimed, and whether the Tribunal is right in dismissing their application for the same.

11. It is the claim of the petitioners before the Tribunal as well as before this Court that inasmuch as the pay and allowances fixed for the Veterinary Assistant Surgeons working in various departments in the Central Government is Rs.8,000-275-13,500 as fixed by the Fifth Pay Commission of the Central Government and of the fact that there was no pay commission for the employees of the Government of Tamil Nadu after the Fifth Pay Commission and that only the official committee constituted to go into the methods of the pay scales of the employees of the Tamil Nadu pursuant to the Pay Commission report of the Central Government, the pay and allowances fixed for Veterinary Assistant Surgeons, namely, members of the petitioner Association in the scale of Rs.6500-200-11,000 pursuant to G.O. No.162, Finance (P.C) Department, dated 13-4-1998 cannot be sustained and they are also entitled pay and allowances at the rate of Rs.8,000—275—13,500 as fixed for Veterinary Assistant Surgeons working in Central Government. It is also their claim that

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the qualification for appointment to the post of Veterinary Assistant Surgeon both in the Government of Tamil Nadu and in the Central Government are one and the same and the required basic qualification is B.V.Sc., and Animal Husbandry. Mr. N.G.R. Prasad by drawing our attention to the categories of officers constituted in Tamil Nadu Veterinary Surgeons and the service rules relating to the post of Veterinary Assistant Surgeons in Central Government, would submit that the method of appointment, qualifications, responsibilities and functions are in many aspects qualitatively similar and in view of the policy decision of the Government of Tamil Nadu, the members of the petitioner Association should be granted the equal pay and non-praticing allowances as has been granted to their counterpart on the ground that they are performing identical duties and responsibilities. He also pointed out that even though their counterparts namely M.B.B.S., B.D.S., B.S.M.S., Homeopathy working in other departments in the Government of Tamil Nadu are provided with the scale of pay of Rs.8,000-275-13,500, the members of the petitioner Association are granted with the scale of pay viz., Rs.6,500-200-11,100 i.e., one stage lower. According to him, this is illegal and against the policy decision taken by the Government of Tamil Nadu in the matter of pay fixation.

12. As against the above claim, the Government in their reply affidavit before the Tribunal as well as counter affidavit in this Court explained that prior to the official committee (1998), the post of Veterinary Assistant Surgeon was all along one level below that of members working in various medical departments with M.B.B.S., qualification. Prior to the official committee, the scale of pay for the post of Veterinary Assistant Surgeons was Rs.2,000—3,500 and that of the post of Civil Assistant Surgeon was Rs.2,200-4000. The official committee had recommended corresponding revised scale of pay taking note of the pre-revised scale of pay for the post of Veterinary Assistant Surgeons as Rs.6500-11100 and also for the post of Civil Assistant Surgeons as Rs.8000-13500. According to them, the pay parity prevailing in the pre-revised scale has been continued, after the official committee recommendations also, i.e., one level below that of Civil Assistant Surgeon. Mr. R. Muthukumarasamy, learned Additional Advocate General has also brought to our notice that the Central Pay Commission has recommended that the entry level of Assistant Director possessing B.V.Sc., Degree qualification be granted the revised scale of pay of Rs.8000-13500 and the Surgeons working in the Offices are designated as Assistant Directors and those working in the field level are called Veterinary Assistant Surgeons. It is also pointed out that in the State Government, the post of Assistant Director is already granted Central scale of pay of Rs.8000-13500. It is also the claim of the respondents that the post of Assistant Director is the promotion post for the post of Veterinary Assistant Surgeons. Hence, it is pointed out that the entry level post namely Veterinary

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Assistant Surgeon is placed one level below that of Assistant Director of Animal Husbandry, i.e., Rs.6500-11,100. It is also brought to our notice that the post of Veterinary Assistant Surgeon in State Government is already on par with that of Assistant Engineer and Agricultural Officer. The qualification prescribed for these posts are B.E., and M.Sc.,/B.Sc., (Agri) respectively. Mr. R. Muthukumarasamy, learned Additional Advocate General also pointed out that any deviation made in respect of the Veterinary Assistant Surgeon alone will dislocate the horizontal relativity maintained in the State. It is his further claim that the post of Veterinary Assistant Surgeons are all along on par with that of the Engineering Graduates and Agricultural Graduates, etc.

13. It is also pointed out by the learned Additional Advocate General that educational qualification cannot be the sole determinant of pay structure to the exclusion of other job factors. It is further pointed out that the workload and the responsibilities of the Civil Assistant Surgeons are definitely more onerous than that of the Veterinary Assistant Surgeons. In this regard, it is useful to mention the recommendation of the third Tamil Nadu Pay Commission which reads as under:

> "69. The Tamil Nadu Veterinary Assistant Surgeons' Association has very strongly urged for parity between the pay scales of the Veterinary Assistant Surgeons and Civil Assistant Surgeons on the ground that the length and rigour of the academic course of both the categories were the same. We would like to point out again that educational qualifications cannot be the sole determinant of the pay structure to the exclusion of other job factors. The workload and responsibilities of the Civil Assistant Surgeons are definitely more onerous than that of the Veterinary Assistant Surgeons. In this context, we would like to refer to the observations of the Second Pay Commission that the duties and responsibilities of a medical officer are certainly more valuable and the training, knowledge and skill to be acquired by them are of a greater order (Chapter XIX, paragraph VIII, page 106). We agree with this view and feel that there is no reason to interfere with the existing differential between these two categories."

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It is also brought to our notice that the Fourth, Fifth Pay Commissions and also official committee, 1998 have also recommended the corresponding revised scale of pay for the post of Veterinary Assistant Surgeons one level below that of Civil Assistant Surgeon.

14. Regarding stagnation in the post of Veterinary Assistant Surgeons, it is pointed out that persons in the post

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beyond 10 years are eligible for movement to selection grade scale of Rs.8000-13500 and after completing 10 years in Selection Grade are eligible to movement to Special Grade of Rs.10,000 – 15,200. It is also brought to our notice that in G.O.Ms.No. 562, Finance, dated 28-9-98, stagnation increment was also sanctioned with effect from 1-9-98 as an incentive to those employees who have completed 10 years of service in the Special Grade post. It is further pointed out that the said scheme of Selection Grade and Special Grade and sanction of bonus increment to employees in State Government are more liberal and in the Government of India, the scheme of time bound upgradation has been sanctioned only on completion of 12/24 years of service; hence, according to them, there is no discrimination made to the category of Veterinary Assistant Surgeons alone.

15. The following Comparison Table in respect of Veterinary Assistant Surgeons, Assistant Engineer, Agricultural Officer and Assistant Civil Surgeons are relevant for our consideration:

COMPARISON OF PAY SCALES IN VARIOUS PAY COMMISSIONS

Pay Commissions	Veterinary Assistant Surgeon	Assistant Engineer	Agricultural Officer	Assistant Civil Surgeon
Second Pay Commission with effect from 1-10-70	425-700	425-700	400-700	525-900
Third Pay Commission with effect from 1-4-1978	600-1050	600-1050	600-1050	750-1350
Fourth Pay Commission with effect from 1-10-1984	1160-1950	1160-1950	1160-1950	1340-2430

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Pay Commissions	Veterinary Assistant Surgeon	Assistant Engineer	Agricultural Officer	Assistant Civil Surgeon
Fifth Pay Commission with effect from 1-6-1988	2000-3500	2000-3500	2000-3200	2200-4000
Official Committee with effect from 1-1-1996	6500-11100	6500-11100	6500-11100	8000-13500

COMPARISON OF VETERINARY ASSISTANT SURGEON

AND ASSISTANT CIVIL SURGEON.

Details	Assistant Civil Surgeon	Veterinary Asst., Surgeon
Duties and Responsibilities	More onerous Health care of human being and treating diseases through Medicine and Surgery intensive care of patients in critical conditions and take care of patients met with accidents etc.,	Not More onerous. He is in-charge of Veterinary Sections of live stock farms artificial insemination and key village centres
Allowances	Allowed Non-practicing Allowance	Allowed Risk Allowances

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Details	Assistant Civil Surgeon	Veterinary Asst., Surgeon
Special Qualification	Specialist should have also posses Diploma Qualification in the respective field in various discipline along with M.B.B.S Qualifications	No such is Specialist Qualifications

COMPARATIVES STATEMENT

Details	Government of India	State of Tamil Nadu
Qualifications	B.V.Sc.,	B.V.Sc.,
Appointment as	Assistant Director	Veterinary Assistant Surgeon
Assistant Director	Entry Level Rs.8000–13,500	Second Level Rs.8000-13,500 i.e., Promotion post to Veterinary Asst., Surgeons
Selection Grade Pay Scales	Not provided in the Central Scales of Pay	Selection Grade Pay Scale available on completion of 10 years of service at Rs.8000-13,500 for Veterinary Asst. Surgeon

It is clear that the educational qualification cannot be the sole determination for fixing the pay structure. Further, the work-load and responsibilities of Civil Assistant Surgeons and Doctors of Indian Medicine are more onerous than those of Veterinary Assistant Surgeons. The scale of pay of Assistant Director in the Animal Husbandry Department is already on par with that of similar post in Government of India.

16. Now let us consider the relevant rules, namely, sub-rules for the Tamil Nadu Animal Husbandry Service:

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RULES

1. CONSTITUTION:-The service shall consist of the following classes and categories of posts,namely:-

CLASS I

xx xx xx

CLASS IV

Category-1 Assistant Director of Animal Husbandry Specialist (Livestock) including Assistant Director of Animal Husbandry Specialist (Disease investigation) Superintendent of Farms: Clinician, Veterinary Officer, Officers Incharge of Regional Artificial Insemination Centre and Dairy Extension Officer.

Category-2 xx xx

Category-3 xx xx

CLASS V

Category-1 Veterinary Assistant Surgeon, Junior Research Statistican.

2. APPOINTMENT: (a) Appointment to the several classes and

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categories of posts in the service

shall be made as follows:

Class	Category	Posts	Method of recruitment.
1.	2.	3.	4.
IV.	1	Assistant Director of Animal Husbandry, Specialist (Live Stock) including Assistant Director of Animal Husbandry, Specialists (Disease Investigation) Superintendent of Farms, Clinician, Veterinary Officers, Officer incharge of Regional Artificial Insemination Centre and Dairy Extension Officer.	By promotion from among the holders of the posts in Category-1 of Class V (or) appointment from among the holders of the post of Forest Veterinary Officers in Category-3 of Class IV; or by direct recruitment.
	2.	xx xx	
	3.	xx xx	
	4.	xx xx	
	i.	Veterinary Assistant Surgeon and Junior Research Statistician.	By direct recruitment.
	2.	xx xx	

6. OTHER : QUALIFICATION:

No person shall be eligible for appointment to the post and by the method specified in columns (1) and (2) respectively of the Table below, unless he possesses the qualifications specified in the corresponding entries in columns (3) thereof:

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CLASS IV

Post 1.	Method of recruitment 2.	Qualification 3.
Category-1 (Assistant Director of Animal Husbandry Specialist (Livestock) including Assistant Director of Animal Husbandry Specialist (Disease Investigation) Superintendent of Farms, Clinician, Veterinary Officer Officer in charge of Regional Artificial Insemination Centre and Dairy Extension Officer,	By promotion from category-1 in Class V. (OR) By transfer from among officers in category 3 of Class IV. (OR) By direct recruitment. (OR) By direct recruitment.	a. BVSc., degree. b. Experience in the Tamil Nadu Animal Husbandry Department for a period of not less than five years and c. Must have passed the Account Test for Executive Officers. B.V.Sc., degree.
Category-1 Veterinary Assistant Surgeon Junior Research Statistician.	Direct recruitment	B.V.Sc., degree.

17. It is clear from the above details that in the State of Tamil Nadu the post of Veterinary Assistant Surgeons is placed one level below that of Assistant Directors in the scale of Rs.6500-11,100. It is further seen that the basic pay of Rs.8000-13,500 has been granted to Assistant Directors in the Veterinary Service. As rightly pointed out, if the pay scale of Veterinary Assistant Surgeon has to be stepped up to the level of Rs.8000/- as demanded by the members of the petitioner Association, the basic pay of Assistant Director of Veterinary Service has to be still stepped up and it will result in chain action as well as increase in the

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financial burden on the Government. As rightly pointed out by the Tribunal, even if there is any disparity among Assistant Directors as well as Veterinary Assistant Surgeons and other similarly placed persons in the other departments, it is for them to pursue the Government and ultimately it is for the Government to take a decision if the same is acceptable. The comparison also shows that Civil Assistant Surgeons and Veterinary Assistant Surgeons are not doing equal work. Undoubtedly, the work load and responsibilities of the Civil Assistant Surgeons and Members of the Indian Medicine are more onerous than that of the Veterinary Assistant Surgeons.

18. Now we shall consider various decisions relied on by both sides in respect of their respective stand. Mr. N.G.R. Prasad very much relied on the following decisions:

i) Supreme Court judgement in Appeal (Civil) No. 6562 of 2002 (STATE OF HARYANA v. CHARANJIT SINGH) Dated 05-10-2005.

ii) 2004 (4) SCC 646 (MP RURAL AGRICULTURE EXTENSION OFFICERS ASSN. V. STATE OF M.P)

iii) (2002) 6 SCC 72 (STATE OF HARYANA v. HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION)

(iv) (2003) 6 SCC 123 (STATE OF HARYANA v. TILAK RAJ)

(v) (2002) 4 SCC 556 (STATE BANK OF INDIA v. M.R. GANESH BABU)

(vi) (2004) 6 SCC 218 (STATE OF MIZORAM v. MIZORAM ENGINEERING SERVICE ASSOCIATION)

(vii) Patna High Court's Judgement in C.W.J.C. No. 7116 of 1999 Dt:8-7-2005 (BIHAR VETERINARY ASSOSN., v. STATE OF BIHAR).

Though emphasis is made in all the above decisions for equal pay for equal work, if the duties and responsibilities are one and the same, it is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. It is also not in dispute that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. In the context of the complex nature of issues involved, the far-reaching

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consequences of a decision in the matter and its impact on the administration of the State Government, Courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. However, it does not mean that courts cannot entertain any proceeding against such administrative decision taken by the Government. On the other hand, the courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government, while taking the decision, has ignored the factors which are material and relevant for a decision in the matter.

19. In STATE OF HARYANA v. TILAK RAJ [(2003) 6 Supreme Court Cases 123], Their Lordships have held that problem about equal pay cannot always be translated into a mathematical formula. It was held in para 11 that to claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. In para 12 the Court held that,

> "12. 'Equal pay for equal work' is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

20. Mr. N.G.R. Prasad by drawing our attention to the fact that higher scale of pay on par with Central Government scale is being paid to the Veterinary Assistant Surgeons in other States as well as the comparative statement of pay scales of Medical Doctors and Veterinary Assistants in Central Government. As observed in STATE OF H.P. v. P.D. ATTRI (1999 3 SCC 217), one State is not bound to follow rules and regulations applicable to employees of the other State and even if they had been followed, it was not necessary to follow the changes subsequently made by the other State. It is also relevant to note that as per the decision of the Supreme Court in M.P. RURAL AGRICULTURE EXTENSION OFFICERS ASSOCIATION v. STATE OF M.P., [2004 (4) SCC 646], the recommendation of the pay commission is not binding on the State and the same cannot be enforced by issuing a writ of or in the nature of mandamus. It is also clear from the said decision that the State can make rules in exercise of powers conferred on it under proviso to Art. 309 of the Constitution, contrary to the recommendations by evolving policy decision and give the same a retrospective effect. The conclusion in para 26 of the judgement of Their Lordships is relevant:

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"26. True it may be that when recommendations are made by a Pay Commission, evaluation of job must be held to have been made but the same by itself may not be a ground to enforce the recommendations by issuing a writ of or in the nature of mandamus although the State did not accept the same in toto and made rules to the contrary by evolving a policy decision which cannot be said to be arbitrary or discriminatory."

21. In STATE OF HARYANA v. HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION [(2002) 6 Supreme Court Cases 72], Their Lordships have re-stated the law that fixation of pay and determination of parity in duties is the function of the executive and while taking a decision in this matter several relevant factors have to be considered. They also held that financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. Finally, Their Lordships have held that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity only when they find such a decision to be patently irrational, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

22. Learned Additional Advocate General heavily relied on the decision in UNION OF INDIA v. TARIT RANJAN DAS, reported in 2003 AIR SCW 7082 and in STATE OF HARYANA v. CHARANJIT SINGH in Appeal (Civil) No. 6562 of 2002 dated 05-10-2005. In the first reported decision, the following observation/conclusion is pressed into service: (paras 10 and 11)

"10. In State of W.B. and others v. Hari Narayan Bhowal and others [1994 (4) SCC 78] it was observed:

"This Court in the case of Delhi Veterinary Assocn. V. Union of India [1984 (3) SCC 1] said that in additijon to the principle of 'equal pay for equal work', the pay structure of the employees of the Government should reflect many other social values. It was said:

"The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level of which the initial recruitment is made in the hierarchy of service or cadre, minimum

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educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors."

11. In the Case of State of U.P. v. J.P. Chaurasia [1989 (1) SCC 121] it was pointed out that whether two posts are equal or should carry the equal pay, depends on several factors. It was not depend just upon either the nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts by the Competent Authorities constituted for the purpose and Courts cannot ordinately substitute themselves in the place of those authorities. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission and the Government, who would be the best Judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of State of M.P. v. Pramod Bhartiya [1993 (1) SCC 539] by a three-Judge Bench of this Court. In the case of Shyam Babu Verma v. Union of India [1994 (2) SCC 521] a claim for equal pay by a group of Pharmacists was rejected saying that the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable."

After saying so, the Honourable Supreme Court quashed the order of the Tribunal as well as the order of the High Court confirming the same.

23. In the latter unreported decision (Appeal (Civil) No. 6562/2002), the doctrine namely equal pay for equal work was considered with reference to the earlier decisions of the Supreme Court in the cases of

i) STATE OF HARYANA v. JASMER SINGH (1996) 11 SCC 77)

ii) HARBANS LAL v. STATE OF H.P (1989) 4 SCC 459)

iii) HARYANA v. ITILAK RAJ (2003) 6 SCC 123)

iv) ORISSA UNIVERSITY OF AGRICULTURE & TECHNOLOGY v. MANOJ

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K. MOHANTY (2003) 5 SCC 188)

v) GOVERNMENT OF WEST BENGAL v. TARUN K. ROY (2004)1 SCC 347)

vi) STATE BANK OF INDIA v. M.R. GANESH BABU (2002 (4) SCC 556)

vii) STATE OF ORISSA v. BALARAM SAHU (2003) 1 SCC 250), and

viii) BHAGWAN DASS & OTHERS v. STATE OF HARYANA (1987)4 SCC 634)

concluded thus: (para 17)

> "17. Having considered the authorities and the submissions we are of the view that the authorities in the cases of JASMER SINGH, TILAK RAJ, ORISSA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY AND TARUN K. ROY lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the

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> same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof…"

The above conclusion makes it clear that Their lordships have arrived such a decision after considering the principles laid down in the decisions relied on by Mr. N.G.R. Prasad. We have referred to the fact that though the educational qualification, namely, degree in B.V.Sc., is the same for the post of Assistant Director as well as Veterinary Assistant Surgeons, in view of the rules, namely, sub-rules for the Tamil Nadu Animal Husbandry Services framed in exercise of the powers conferred by the Proviso to Article 309 of the Constitution of India, we are of the view that the decisions relied on by Mr. N.G.R. Prasad are distinguishable and not applicable to the cases on hand.

24. Though persons can be appointed directly as Assistant Director, the rules referred to above make it clear that the post of Assistant Director is the promotional post for the post of Veterinary Assistant Surgeon, hence the entry level post namely Veterinary Assistant Surgeon is placed one level below that of Assistant Director of Animal Husbandry with scale of pay of Rs.6500-11,100. We have already pointed out that the pay of Veterinary Assistant Surgeon in the State Government is on par with that of Assistant Engineer and Agricultural Officers and the qualification prescribed for those posts are B.E., and M.Sc.,/B.Sc., (Agri) respectively. Hence, as rightly pointed out, any deviation made in respect of Veterinary Assistant Surgeon alone will dis-locate the horizontal relativity maintained in the State. The post of Veterinary Assistant Surgeon is treated on par with the Engineering

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graduates and Agricultural graduates etc. The existing pay parity between Veterinary Assistant Surgeon and Doctors has been continued in the revised scale of pay also. Therefore, we are satisfied that there is no discrimination or violation as claimed by the petitioners. We have already stated the educational qualification cannot be the sole determinant of pay structure to the exclusion of other job factors. The respondents have demonstrated the work-load and responsibilities of the Civil Assistant Surgeons which are definitely more onerous than that of Veterinary Assistant Surgeons. We have already referred to the fact that incentive increments are being paid to Veterinary Assistant Surgeons who have completed 10 years of service in the Special Grade post, grant of Selection Grade, Special Grade and bonus increments are sanctioned as a relief measure to those who are stagnating for more than 10/20/30 years of service in a post. As rightly pointed out, the scheme of Special Grade and Selection Grade and sanction of bonus increments to the State Government employees are more liberal. In Government of India, the scheme of upgradation has been sanctioned after completion of 12/24 years of service. Here again, we are satisfied that there is no discrimination made to the categories of Veterinary Assistant Surgeons alone. We have also stated in the earlier part of our order the duties and responsibilities of Civil Assistant Surgeons and Doctors of Indian Medicines who are more onerous than those of Veterinary Assistant Surgeons. We are also satisfied that the scale of pay of Assistant Director in the Animal Husbandry Department is already on par with that of similar post in the Government of India.

25. In the light of what is stated above, we are satisfied that the Tribunal considered all relevant materials and rightly rejected the claim of the applicants/petitioners. In the light of our discussion, we are in agreement with the said conclusion and we do not find any error, infirmity or valid ground for interference. Accordingly both the Writ Petitions fail and are dismissed. No costs.

सत्यमेव जयते

R.B.

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Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government,
   Finance (C.M.P.C.)
   Department, Fort St. George,
   Chennai-9.

2. The Secretary to Government,
   Animal Husbandry and Fisheries Department,
   Fort St. George, Chennai-9.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   High Court Complex, Chennai-104.

4. The Director of Veterinary Services,
   Central Office Buildings, Block II,
   Teynampet, Chennai-2.

+2 CCs to Mr.G.Purushothaman, Advocate, SR No.3242, 3812/06

+1 CC to the Government Pleader, SR No.3488/06

TM(CO)
BG/6.2.2006

Common Order

in W.P.Nos.4384/2003

and 29076/2004.

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